THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 26375 of 2006

Dated: 28-12-2006

Between:

S. Srinivasulu

..... PETITIONER

AND

The Andhra Pradesh State Road
Transport Corporation,
Rep., by its Managing Director,
Musheerabad. Hyderabad and 3 others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 26375 of 2006

O R D E R:

This writ petition is filed questioning the proceedings dated 02-11-2006 issued by the 3rd respondent proposing to deduct Rs.50,000/- from the hire charges payable to the petitioner towards compensation awarded by the Lok Adalat, Khammam in O.P.No.728 of 2005.

The petitioner is the owner of the bus bearing No.24U 4500. It is not in dispute that the said vehicle was hired to the first respondent-Andhra Pradesh State Road Transport Corporation
(for short 'the Corporation') under an agreement, which is still subsisting. On 20-11-2003, the said bus met with an accident at Khammam in which one Smt.Gumpula Rani was injured. The said injured filed O.P.No.728 of 2005 before the Motor Accidents Claims Tribunal, Khammam claiming compensation of Rs.1,00,000/-. Admittedly, the petitioner was not made a party to the said claim petition and the Corporation alone was made a party. It appears that the matter was compromised before the Lok adalat on 24-06-2006 in which the Corporation agreed to pay compensation of a sum of Rs.50,000/-. Accordingly, an award was passed on 24-06-2006. Thereafter, the impugned proceeding were issued by the Corporation proposing to deduct the amount of Rs.50,000/- from the hire charges payable to the petitioner. Aggrieved by the same, the present writ

petition is filed.

I have heard the learned counsel for the petitioner as well ass the learned standing counsel appearing for the Corporation.

The learned counsel for the petitioner contended that the Corporation alone shall be made liable for payment of the sum awarded in O.P.No.728 of 2005 and therefore the impugned action is arbitrary and illegal.

On the other hand, the learned Counsel for the Corporation while referring to Clause-5(iv) of the Hire Agreement contended that the owner of the vehicle shall be responsible for all claims payable under the provisions of the Motor Vehicles Act, 1988 and the Rules made thereunder.

Clause-5(iv) of the Hire Agreement runs as under :

> *"The owner shall be responsible for all claims that may arise due to statutory violations out of the operations, like claim due to accidents payable under the provisions of M.V. Act 1988 Rules and APSRTC shall under no circumstances be made liable or responsible to pay compensation that may be awarded by Motor Accidents Claims Tribunal or Tribunals in respect of accidents."*

It is relevant to note that the Supreme Court in RAJASTHAN STATE ROAD TRANSPORT CORPORATION vs. KAILASH NATH KOTHARI[1] while declaring an identical clause as against public policy, held as under :

> *"The expression owner must include, in a given case, the person who was actually in possession and control of the vehicle and under whose directions and commands, the driver was obliged to operate the vehicle. To confine the meaning of 'owner' to the registered owner only would in a case where the vehicle is in the actual possession*

and control of the hirer, not be proper for the purpose of fastening of liability in case of an accident. The liability of the owner is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident."

Following the above decision in similar circumstances, the action of the respondent Corporation in withholding the hire charges was held arbitrary and illegal.

In the circumstances, the action of the impugned proceedings dated 2-11-2006 cannot be sustained and the same is set aside; and the Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J

Dated: 28-12-2006
KLP

[1] AIR 1997 SC 3444 = (1997) 7 SCC 481